

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Developing a Unified Intercarrier)	CC Docket No. 01-92
Compensation Regime)	

REPLY COMMENTS OF VERIZON WIRELESS

VERIZON WIRELESS

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Dated: November 5, 2001

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SUMMARY

Although the comments in this proceeding provided a diversity of views on a broad range of topics, the record supports the application of a bill-and-keep mechanism to the exchange of traffic between LECs and CMRS providers. Many commenters support bill-and-keep for all local traffic, and many endorse bill-and-keep specifically for LEC-CMRS traffic. Few parties oppose the application of bill-and-keep to LEC-CMRS traffic. Those that oppose this action provide no sustainable justification for their position.

Despite the general support for bill-and-keep, there is very little consensus on what form bill-and-keep should take. No bill-and-keep proposal currently under consideration or recommended in comments provides a solution to the complex issues surrounding LEC-CMRS interconnection. Verizon Wireless is thus now submitting a new proposal, Symmetrical Bill-and-Keep (“SYBAK”), which is designed to be a comprehensive regulatory framework that is efficient for all carriers.

SYBAK has three components: (1) a default bill-and-keep proposal that places the POI at a meet point at the LEC tandem and provides that each carrier will bear the cost of facilities on its side of the meet point; (2) a default bill-and-keep proposal that applies to SS7 usage and that permits interconnection at the LEC SS7 gateway; and (3) the availability of virtual NXXs to CMRS providers. SYBAK also specifically deals with facilities exhaustion issues. SYBAK is in the public interest because it is administratively efficient, minimizes regulatory intervention, and emphasizes the need for symmetrical obligations. SYBAK should apply to LEC-CMRS interconnection, including interconnection with rural LECs. The benefits of SYBAK will result from making it the national rule.

Finally, Verizon Wireless urges the Commission to establish a zone of reasonableness for CMRS switched access charges, and to compel IXC's to pay these charges without the imposition of a tariff mechanism for this purpose.

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Verizon Wireless hereby submits reply comments on the *Notice of Proposed Rulemaking* (“*Notice*”)¹ in the captioned proceeding. Consistent with the record in this proceeding, Verizon Wireless urges the Commission to adopt an appropriate form of bill-and-keep to govern the exchange of LEC-CMRS traffic as part of a regulatory framework that will promote the public interest.

DISCUSSION

Although the broad scope of this proceeding brought a diversity of comments, the record supports a transition to an appropriate bill-and-keep mechanism for the exchange of local traffic. With the exception of rural carriers and some competitive local exchange carriers (“CLECs”), many commenters endorse a bill-and-keep mechanism to replace the current compensation flows between carriers that exchange local telecommunications traffic.² Parties that oppose bill-and-keep fail to show why an appropriate form of bill-

¹ Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, *Notice of Proposed Rulemaking* (rel. April 27, 2001).

² See, e.g., BellSouth at 2; CTIA at 2; GSA at 6-12; KMC Telecom at 3 (voluntary bill-and-keep or bill-and-keep where traffic is roughly equal is acceptable); Mid-Missouri Cellular at 2; Nextel at 14; Qwest at 4; SBC at 1; Sprint at 5.

and-keep would not overcome the deficiencies of the current Calling Party Network Pays (“CPNP”) regime, which one such carrier recognized as being “fraught with costly reporting requirements and administrative minutia.”³

Many commenters support bill-and-keep for all local traffic,⁴ and many endorse bill-and-keep specifically for LEC-CMRS traffic.⁵ Few parties oppose the application of bill-and-keep to LEC-CMRS traffic, and those that do provide no sustainable justification for singling out LEC-CMRS traffic.⁶

Although as a general matter there is support for bill-and-keep, there are a wide variety of views on which type of bill-and-keep mechanism the Commission should

³ Alltel at 3. Several parties representing rural interests opposed bill-and-keep. *See* Alaska Telephone Assoc. at 3-4; Century Tel at 22; ICORE Companies at 7; ITC, Inc. at 2; National Rural Telecom Association at 6; Oklahoma Telephone Coalition at 5-6; Ronan Tel. and Hot Springs Tel. at 2; Telecom Consulting Associates at 3; Western Alliance at 12.

⁴ *See, e.g.*, BellSouth at 2; Mpower at 2; Qwest at 1.

⁵ Allied Personal Communications Industry Association of California at 4-5; AT&T Wireless at 1; CTIA at 2; Illinois Commerce Commission at 3 (any bill-and-keep regime should include wireless traffic); Nextel at 1; PCIA at 3 (bill-and-keep is generally appropriate for LEC-CMRS interconnection, although PCIA questions whether it would be acceptable for paging); VoiceStream at 1.

⁶ For instance, Oklahoma Telephone Coalition (“OTC”) argues that bill-and-keep should not apply to LEC-CMRS traffic because wireless carriers typically charge for incoming calls. OTC argues that CMRS are compensated twice, once by customers and a second time by the wireline service provider, and that the Commission should eliminate terminating compensation to the CMRS provider from IXC, LEC, and CLEC as long as the CMRS provider continues to bill a terminating charge to its CMRS customers. Oklahoma Telephone Coalition at 47-48. OTC misunderstands how wireless carriers do business. CMRS providers are not regulated on a cost basis and therefore price their services according to the dictates of the marketplace, not based on whether they receive compensation from wireline carriers.

adopt. Most commenters do not support either COBAK or BASICS.⁷ A few propose other plans.⁸ The commenters that support bill-and-keep agree that bill-and-keep alone is not sufficient, but that the FCC should adopt bill-and-keep in conjunction with a comprehensive inter-carrier compensation regulatory framework.⁹

Given that the opponents of bill-and-keep failed to show that it would be against the public interest to adopt some form of bill-and-keep to govern the exchange of traffic between LECs and CMRS providers, and given the documented benefits of this approach, Verizon Wireless urges the Commission to implement an appropriate form of bill-and-keep for this traffic. In these reply comments, Verizon Wireless proposes such a mechanism, Symmetrical Bill-and-Keep (“SYBAK”), which overcomes the deficiencies of the bill-and-keep proposals currently before the Commission. As part of its bill-and-keep proposal, Verizon Wireless addresses certain other issues that are critical components of a comprehensive regulatory framework to govern the compensation flows between LECs and CMRS providers. Verizon Wireless also urges the Commission to clarify as part of this proceeding that as long as CMRS providers charge presumptively lawful switched access rates, IXCs are compelled to pay wireless carriers for this service.

⁷ See, e.g., Alltel at 12-14; Century Tel at 24; CTIA at 29; Michigan Exchange Carriers Association at 20-21; Qwest at 27; Sprint at 16-19.

⁸ See, e.g., Mid-Missouri Cellular at 17-23; SBC at 24; Sprint at 16.

⁹ Mid-Missouri Cellular at 5-6 (comprehensive regime must allow wireless carriers to implement the most efficient interconnecting network configurations); SBC at 19.

I. ARGUMENTS AGAINST BILL-AND-KEEP ARE UNAVAILING

Several parties argue against bill-and-keep, some raising concerns that are specific to LEC-CMRS interconnection and others that would apply to bill-and-keep between all types of carriers. Verizon Wireless's SYBAK proposal will address these concerns and, moreover, will be efficient for all carriers.

A. The Commission Has Plenary Authority to Order Bill-and-Keep for LEC-CMRS Interconnection

The comments overwhelmingly agree that the FCC retains plenary authority over LEC-CMRS interconnection under Section 332.¹⁰ Only the California Public Utilities Commission ("CPUC") provided any analysis to question the FCC's plenary authority over LEC-CMRS interconnection. The CPUC maintains that the states have jurisdiction over rates charged by CMRS carriers for interconnection.¹¹ The CPUC relies on Section 332(c)(3)(A), which states that "this paragraph shall not prohibit a State regulation of the other terms and conditions of commercial mobile services." The legislative history of this section states that "terms and conditions" should be read broadly to include "the requirement that carriers make capacity available on a wholesale basis" – which, the CPUC argues, includes the prescription of wholesale rates for network capacity that can

¹⁰ AT&T Wireless at 16; CTIA at 3; Rural Telecommunications Group at 5; Triton PCS at 3; VoiceStream at 14.

¹¹ CPUC at 12.

be used by competing carriers.¹² From this the CPUC concludes that the states have the authority to determine the actual rates that CMRS providers charge for interconnection.¹³

The CPUC's arguments are entirely unsupported. As a general matter, Section 332(c)(3)(A) prohibits states from regulating the rates of commercial mobile service providers. States may petition the FCC for authority to regulate CMRS rates, but such petitions must provide evidence that market conditions fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory.¹⁴ Section 332 preempts state regulation of all "rates charged by" CMRS carriers and does not distinguish between retail, wholesale, or interconnection rates.¹⁵

Contrary to the CPUC's arguments, the FCC has already made clear that Section 332 preempts state regulation of interconnection rates of CMRS providers.¹⁶ Although several states have attempted to overcome Section 332's preemption of CMRS rates, no state has been successful.¹⁷ Moreover, the fact that states can regulate "other terms and

¹² *Id.*

¹³ *Id.*

¹⁴ 47 U.S.C. § 332(c)(3)(A).

¹⁵ *See id.*

¹⁶ Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services, *Second Report and Order*, 9 FCC Rcd 1411, 1500 (¶ 237) (1994) ("*CMRS Second Report and Order*").

¹⁷ *See, e.g.*, Petition of the People of the State of California and the Public Utilities Commission of the State of California To Retain Regulatory Authority over Intrastate Cellular Service Rates, *Report and Order*, 10 FCC Rcd 7486, 7530 (1995); Petition of the Connecticut Department Public Utility Control To Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut, *Report and Order*, 10 FCC Rcd 7025, 7041 (1995) ("*Connecticut Preemption Petition*").

conditions of commercial mobile services” under Section 332(c)(3)(A) lends no support to the CPUC’s position. The CPUC is correct that “terms and conditions” include “the requirement that carriers make capacity available on a wholesale basis,”¹⁸ but this provision does not provide the states any more authority to regulate wholesale rates than it does to regulate retail rates – which is, by law today, none. When the Connecticut Department of Public Utility Control filed its rate regulation petition with the FCC, it explicitly asked for authority over CMRS wholesale rates.¹⁹ For several reasons, including evidence that cellular rates were declining and that there had been no showing of consumer dissatisfaction, the FCC rejected the DPUC’s petition.²⁰ The Second Circuit upheld this decision, finding that the DPUC never demonstrated that wholesale cellular rates in Connecticut were unreasonable or discriminatory.²¹ Neither the FCC nor the Court concluded that state regulation of wholesale CMRS rates was subject to a different preemption standard than appropriate for retail rates.²² Both are preempted nationwide.

¹⁸ H.R. Rep. No. 103-111, 103rd Cong., 1st Sess. 261.

¹⁹ *Connecticut Preemption Petition*, 10 FCC Rcd at 7046.

²⁰ *Id.* at 7056.

²¹ *Conn. Dept. of Pub. Util. Control v. FCC*, 78 F.3d 842, 851 (1996).

²² In addition, even if the states’ authority to regulate wholesale arrangements did include the ability to regulate wholesale rates, which it does not, it is not at all clear why the CPUC believes that interconnection rates would properly be considered wholesale rates. The duty to interconnect is distinct from the duty to resell under the 1996 Act. *Compare* 47 U.S.C. § 251(a)(1) & 251(c)(2) *with* 47 U.S.C. § 251(b)(1) & 251(c)(4). Indeed, the 1996 Act creates entirely different pricing standards for LEC interconnection and wholesale rates. *Compare* 47 U.S.C. § 252(d)(1) *with* 47 U.S.C. § 252(d)(3). The CPUC fails to explain the relevance of Section 332’s legislative history, and its attempt to assert a state role over CMRS interconnection rates is unavailing for this reason as well.

The 1996 Act did not change this analysis. The CPUC asserts that the Eighth Circuit's decision in the *Iowa Utilities* case did not establish that the FCC has plenary authority over all CMRS rates because the Eighth Circuit did not conclude that states played no role in setting LEC-CMRS interconnection rates.²³ The CPUC also argues that the Supreme Court in the *AT&T Corp.* appeal of the Eighth Circuit case found that states continue to exercise authority to set the actual rates for interconnection service.²⁴ Both of the CPUC's arguments fail. The Eighth Circuit in *Iowa Utilities* expressly upheld certain FCC reciprocal compensation and pricing rules as applied to CMRS because Congress amended Section 2(b) to preclude state regulation of rates charged by CMRS providers.²⁵ Contrary to the CPUC's contention, the Eighth Circuit did not leave open a role for the states in the area of CMRS rates, but in fact held that Section 332 gives the FCC authority to issue rules of special concern such as pricing and reciprocal compensation rules for CMRS.²⁶ And, as the D.C. Circuit recently confirmed in the *Qwest* case, the Supreme Court in the *AT&T Corp.* case did not disturb this ruling.²⁷ Thus even after the 1996 Act, the FCC retains plenary authority to regulate LEC-CMRS interconnection.

²³ CPUC at 11 n.6.

²⁴ *Id.* at 12 n.7.

²⁵ *Iowa Utilities Bd. v. FCC*, 120 F.3d 753, 800 (8th Cir. 1997), *aff'd in part, rev'd in part on other grounds*, *AT&T Corp. v. FCC*, 525 U.S. 366 (1999)).

²⁶ *Id.*

²⁷ *Qwest v. FCC*, 252 F.3d 462, 464-66 (D.C. Cir. 2001) (pointing out that no party petitioned for certiorari on this issue on appeal of the case to the Supreme Court, making the issue free from challenge).

Most comments support, as does Verizon Wireless, a national regulatory regime for LEC-CMRS interconnection. Several parties agree that by enacting Section 332, Congress selected a single regulatory regime for CMRS,²⁸ and that the Commission, and not the states, should maintain jurisdiction over CMRS interconnection issues.²⁹ Verizon Wireless and other parties disagree, however, with those commenters that urge the Commission to preempt the role of the states entirely³⁰ because there remains a need for state involvement in dispute resolution and application of the Federal rules adopted by the FCC.³¹ Verizon Wireless also disagrees with Allied Personal Communications Industry Association of California that the FCC cannot adopt rules under Section 332 that are substantively inconsistent with Sections 251-252.³² The courts have rejected that claim. The Eighth Circuit has made clear that the FCC has the authority to adopt “rules of special concern” for wireless carriers,³³ which confirms that there is no overlap or conflict between Sections 251 and 252 and Section 332 that prevents the FCC from moving forward with a bill-and-keep regime for LEC-CMRS interconnection pursuant to Section 332.³⁴

²⁸ RTG at 5.

²⁹ *Id.* at 2; Nextel at 7-8; Triton PCS at 5-7.

³⁰ VoiceStream at 9.

³¹ AT&T Wireless at 31; PCIA at 37-39 (state forum should be option); Verizon Wireless at 10.

³² Allied Personal Communications Industry Association of California at 7.

³³ *Iowa Utilities*, 120 F.3d at 800 n.21.

³⁴ CTIA at 3.

B. Traffic Imbalance Does Not Justify Rejecting Bill-and-Keep For LEC-CMRS Interconnection

Many commenters recognize the efficiencies associated with a bill-and-keep mechanism. These parties confirm that bill-and-keep will enhance economic efficiency and consumer welfare by more readily sending efficient market signals for the costs of interconnection and eliminating the need for monitoring and billing functions associated with the regime today.³⁵

Certain other commenters, however, express doubt that bill-and-keep is economically efficient for a variety of reasons. AT&T, for example, submits economic testimony from Ordoover and Willig, who dispute the efficiency of bill and keep, arguing that the Commission should instead “perfect” the CPNP regime.³⁶ Time Warner provides analysis by Farrell and Hermalin and by Katz and Hermalin, also arguing that bill and keep is not efficient.³⁷ Although the opposition to bill-and-keep comes in a variety of forms, one major objection appears to be that bill-and-keep is inappropriate where traffic is not roughly balanced.³⁸ This contention is without merit.

³⁵ Cable & Wireless at 10-11; CTIA at 2; Nextel at 19-20; Triton PCS at 8; USTA at 21.

³⁶ AT&T at 13-20.

³⁷ Time Warner at 6.

³⁸ CompTel at 16-17; CPUC at 4; Focal Communications et al. at 12 (only carriers with balanced traffic will benefit from bill-and-keep); KMC Telecom at 1 (Commission should only permit mandatory bill-and-keep where traffic flow is roughly equal); Missouri Small Telephone Company Group at 7-8; Onvoy, Inc. at 7; Ronan Telephone Company and Hot Springs Telephone Company at 4 (bill-and-keep in situations where traffic is not roughly equal is unlawful and probably an unconstitutional taking).

When the Commission originally implemented the 1996 Act, it concluded that state commissions could impose bill-and-keep arrangements where the volume of originating and terminating traffic was approximately equal and was expected to remain so.³⁹ The Commission did not base this ruling on the requirements of any statute, but rather on the lack of evidence that the transaction costs of measuring traffic were so high that it would be more efficient to implement bill-and-keep.⁴⁰ There is no statutory requirement that traffic be balanced before the Commission can implement bill-and-keep. Indeed, the 1996 Act specifically permits bill-and-keep arrangements.⁴¹ As BellSouth describes in its comments, traffic balance is not a prerequisite under Section 252(d)(2)(B) given that the ordinary usage of that provision's terms "offset," "mutual," and "reciprocal" does not necessarily contemplate equal balance.⁴² In any event, as Verizon Wireless demonstrated in its comments, the Commission has broader authority under Section 332 over LEC-CMRS interconnection than it has over other telecommunications carriers under Sections 251 and 252 of the Act,⁴³ and Section 332 provides no requirement that traffic be in balance to implement a bill-and-keep regime.

³⁹ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order*, 11 FCC Rcd 15499, ¶ 1111 (1996) (*"First Interconnection Order"*).

⁴⁰ *Id.* ¶ 1117.

⁴¹ 47 U.S.C. § 252(d)(2)(B) (nothing shall "preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)").

⁴² BellSouth at 25 ("Offset" is a synonym of "set-off," which at common law allows entities that owe each other money to apply their mutual debts against each other.)

⁴³ Verizon Wireless at 7.

Traffic balance is also not necessary for bill-and-keep to be efficient. Certain parties claim that traffic balance is a necessary prerequisite for bill-and-keep because without traffic balance, bill-and-keep would destroy the link between the cost-causer and cost payer and encourage inefficient network usage.⁴⁴ But this ignores the fact that there is a benefit to both calling and called party.⁴⁵ Bill-and-keep increases overall economic efficiency and competition in the telecommunications industry because carriers' cost structures will be determined by factors relating to their own networks, rather than the network efficiency and/or litigation practices of terminating carriers. The record demonstrates that bill-and-keep puts pressure on carriers to internalize their network costs.⁴⁶ In addition, carriers' costs might not be the same, meaning that traffic imbalance might still mean that costs are balanced.⁴⁷ As a result, carriers will have a greater incentive to increase the efficiency of their own networks.

Bill-and-keep will also yield efficiency benefits such as reduced administrative expenses from obviating the need to measure traffic and reduced transaction costs as the result of a uniform national rule. These were the factors that the Commission originally considered when it declined to adopt a mandatory bill-and-keep rule in 1996, but experience since 1996 has demonstrated that these benefits would be very high,

⁴⁴ ICore Companies at 7.

⁴⁵ AT&T Wireless at 24; BellSouth at 10.

⁴⁶ Qwest at 21.

⁴⁷ AT&T Wireless at 22.

especially since today's traffic settlement process is ridden with disputes.⁴⁸ Based on this experience, the Commission can easily justify a change in course.

AT&T Wireless also points out that requiring traffic balance places originating carriers in the classic "Catch 22." Under the present system, if a carrier originates more traffic than it terminates, its cost structure will always be higher, and it will not be able to lower its rates to customers to provide customers the incentive to terminate more calls. As AT&T Wireless details, requiring reciprocal compensation has been a significant factor in enabling CMRS providers to lower rates and offer innovative plans.⁴⁹

Although rough traffic balance should not be a prerequisite for the Commission to apply bill-and-keep to LEC-CMRS interconnection, the fact is that LEC-CMRS traffic is tending toward balance in any event.⁵⁰ Given the high transaction costs associated with billing and recording traffic under the CPNP regime,⁵¹ the Commission should adopt a bill-and-keep mechanism for LEC-CMRS interconnection.

⁴⁸ Because CMRS providers do not typically have the systems to measure traffic, LEC-CMRS settlement is based on "factors." In many cases, factors are not always equitable, but to dispute a factor successfully, a CMRS provider must undertake a costly traffic study.

⁴⁹ AT&T Wireless at 14.

⁵⁰ Verizon Wireless at 20.

⁵¹ The Oklahoma Rural Telephone Coalition makes the absurd claim that bill-and-keep would cause significant additional transaction costs in terms of usage, measurement, and billing for LECs. Oklahoma Rural Telephone Coalition at 47. This is simply not possible. Today LECs already measure and bill for reciprocal compensation. Bill-and-keep would dramatically reduce these costs, not increase them.

C. An Appropriate Form Of Bill-and-Keep Will Not Entail Continued Regulatory Intervention

Various commenters raise concerns about whether bill-and-keep will require regulators to become enmeshed in ongoing proceedings to develop rules to deal with a variety of issues.⁵² These parties urge the Commission not to replace one regulatory scheme for another,⁵³ because this would require regulatory intervention that is counter to the deregulatory objectives of the FCC and state commissions.

Certainly this concern is real if the Commission adopts either the COBAK or BASICS proposals. For example, the COBAK proposal would establish bill-and-keep at the “central office” but does not define “central office,” requiring regulators to become involved in determining what is a central office and how to define it in the future.⁵⁴ Century Tel argues that COBAK and BASICS would require the Commission to intervene in the local interconnection market to a far greater degree than the Commission originally did in 1996.⁵⁵ Alltel agrees, stating that BASICS does not clearly define how split of interconnection costs would be achieved and would require additional regulatory intervention.⁵⁶

As detailed below, Verizon Wireless proposes an alternative form of bill-and-keep, SYBAK, in these reply comments that will minimize the likelihood that regulatory involvement is necessary. This version of bill-and-keep emphasizes symmetry,

⁵² Michigan Exchange Carriers Association, Inc. at 20; Time Warner Telecom at 19.

⁵³ CompTel at 3.

⁵⁴ CTIA at 23; Qwest at 27.

⁵⁵ Century Tel at 24.

⁵⁶ Alltel at 12-14.

technological neutrality, and administrative efficiency. It will not require regulatory bodies to define “central office” across different technologies or otherwise require unnecessary regulatory intervention. Verizon Wireless proposes SYBAK because it will be consistent with the FCC’s deregulatory approach and reliance on market forces in the CMRS environment.

D. If Properly Implemented, Bill-and-Keep Will Not Harm Rural LECs

A number of rural carriers oppose bill-and-keep, claiming that it would undermine their financial viability.⁵⁷ They caution that bill-and-keep would inappropriately transfer recovery of lost revenues from exchange customers.⁵⁸ These comments provide little analysis, however, concerning the rural LEC-CMRS issues identified by Verizon Wireless in its initial comments.⁵⁹

Despite the rural LECs’ arguments, Verizon Wireless continues to believe that bill-and-keep offers a viable option for facilitating efficient interconnection arrangements between rural LECs and CMRS carriers. For the most part, rural carriers already exchange a significant amount of their local traffic on a bill-and-keep basis, particularly with other LECs. If bill-and-keep is appropriate for local interconnection between rural and non-rural LECs, it is unclear why it would not also be suitable for rural LEC-CMRS interconnection.

⁵⁷ Alaska Telephone Association at 3-4; Century Tel at 22; ICore Companies at 7; ITC, Inc. at 2; National Rural Telecom Association at 6-7; Telecom Consulting Associates at 3.

⁵⁸ Oklahoma Rural Telephone Coalition at 4; Ronan Tel. And Hot Springs Tel at 8; Western Alliance at 12.

⁵⁹ Verizon Wireless at 46.

As explained in its initial comments, Verizon Wireless believes that bill-and-keep is particularly justified in the rural LEC-CMRS interconnection context. Indeed, special circumstances between rural LECs and CMRS providers justify rules of special concern, pursuant to Section 332, regarding the application of bill-and-keep in that situation.

As the administrative litigation quagmires in Missouri and Iowa have demonstrated, the rural LEC-CMRS carrier relationship is fraught with jurisdictional, technological, and territorial difficulties that have undermined the 251/252 negotiation process. One such jurisdictional/ territorial problem relates to the significant differences in the “local calling areas” of rural LEC and CMRS carriers. While some rural LECs operate local calling areas that are confined to one or two municipalities, some CMRS MTAs cover an entire state, and others cross state boundaries. Pursuant to the Commission’s rules, traffic between a LEC and CMRS provider that originates and terminates within the same Major Trading Area (“MTA”) is subject to reciprocal compensation.⁶⁰ Some rural carriers have justified charging access-like rates for intra-MTA call termination by asserting that reciprocal compensation does not apply unless a CMRS carrier connects directly to a rural carrier in the rural carrier’s local calling area.⁶¹ These same carriers are not willing to pay reciprocal rates for intra-MTA calls from their customers to CMRS carriers, asserting that any calls sent outside of a rural local calling area must be sent on a “1 +” basis, and consequently, any terminating compensation

⁶⁰ 47 C.F.R. § 51.701(b)(2).

⁶¹ See *In the Matter of Mark Twain Rural Telephone Company’s Proposed Tariff to Introduce Its Wireless Termination Service*, Missouri Public Service Commission, Case No. TT-2001-139 (Feb. 8, 2001).

would be payable from the intervening IXC, rather than the rural carrier.⁶² The jurisdictional problem has been complicated further in states like Iowa and Missouri, where rural carriers have filed unilateral “wireless termination” tariffs.

Given the multi-state and sometimes national scope of many CMRS carriers, the large distances involved in transporting and terminating local calls between CMRS and rural carriers, and the significant difference in rural LEC and CMRS “local calling areas,” the Commission should, as Verizon Wireless detailed in its initial comments, adopt a consistent, national framework for allocating transport and termination obligations. Indirect interconnection through the common trunks of larger LECs is a critical component of any such rural LEC-CMRS interconnection framework. The Commission should confirm that the “transiting” function is a form of local interconnection that LECs must continue to provide to CMRS carriers pursuant to Section 332 to facilitate efficient and cost-effective CMRS/rural interconnection.⁶³ Requiring CMRS carriers to install direct trunks to every small, rural LEC in each state would serve only to increase the costs to rural customers for telecommunications service.⁶⁴

Technological differences also justify a standardized federal approach. While rural carriers allege that they face higher costs to operate their networks than do larger

⁶² *Id.*; see also AT&T Wireless at 12-13.

⁶³ See AT&T Wireless at 38; Illinois Commerce Commission at 9; Triton PCS at 13. As explained in Verizon Wireless’ initial comments, indirect interconnection is both practical and consistent with the objectives of the Act. Section 332(c)(1)(B) provides that “upon reasonable request of any...[CMRS provider], the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of Section 201 of this Act.” The 1996 Act did not revoke or alter the Commission’s authority under Section 332 to order LECs to provide interconnection arrangements such as the transiting function to wireless carriers.

LECs, CMRS carriers also face costs that are different than traditional LEC costs. The costs of deploying cell sites in rural areas, purchasing necessary spectrum, and providing ubiquitous roaming in rural areas can be significant. The FCC can set default rules such as those Verizon Wireless proposes in its SYBAK mechanism discussed below regarding appropriate points of interconnection and clarify the important role of third-party transiting carriers, including how and by which carrier the transiting carriers should be compensated.

Verizon Wireless believes that bill-and-keep offers the best promise for simplifying rural LEC-CMRS interconnection, and should be applied to interconnection between CMRS providers and rural as well as non-rural LECs. Such a mechanism would go a long way toward replacing protracted carrier disputes of today with commercially reasonable, negotiated agreements between rural LECs and CMRS carriers. There is no record basis for singling out rural LECs for a different interconnection regime.

II. VERIZON WIRELESS PROPOSES SYBAK FOR LEC-CMRS INTERCONNECTION, WHICH IS A MODEL THAT IS EFFICIENT AND FAIR FOR ALL CARRIERS

Although there is support for bill-and-keep in the record, there is no consensus on what form bill-and-keep should take. Few carriers support the bill-and-keep models the FCC discussed in the *Notice*. For example, Qwest opposes COBAK because it places the point of interconnection at the “central office, which is too close to the end user, and as mentioned above, is vague in that it does not define what is a “central office.”⁶⁵ SBC supports COBAK with certain caveats that include requiring each carrier to establish a

⁶⁴ AT&T Wireless at 13.

⁶⁵ Qwest at 27.

point of interconnection (“POI”) within the called party’s home service area.⁶⁶ Alltel says BASICS does not clearly define how the split of interconnection costs would be achieved and would require additional regulatory intervention, whereas COBAK creates a POI problem, possibly causing the originating carrier to incur huge costs in transporting traffic to the terminating carrier.⁶⁷

Other parties propose their own bill-and-keep methodologies. Mid-Missouri Cellular proposes a hybrid of COBAK and BASICS that would place the POI at the highest common point and depend on whether wireline network interconnection facilities are located within a CMRS service area. If facilities were in the CMRS service area, the costs of interconnecting facilities would be split between carriers. If they were not, the cost of the circuit to reach the CMRS provider’s desired POI would be split 50/50.⁶⁸ CTIA proposes a bill-and-keep mechanism that would permit a CMRS provider to obtain access to a single POI per LATA until Section 271 authority is granted; thereafter CMRS providers would have the right to interconnect at a single POI per MTA.⁶⁹

Although each proposal before the Commission has some merit, no proposal provides a comprehensive or appropriate solution to the issues surrounding LEC-CMRS interconnection. It is not enough for the Commission to decide that bill-and-keep will apply at a certain location in the network architecture. It must also determine which party

⁶⁶ SBC at 26.

⁶⁷ Alltel at 12-14.

⁶⁸ Mid-Missouri Cellular at 17-23.

⁶⁹ CTIA at 32-35.

will bear the cost of transport, what happens when parties claim facilities exhaustion, where parties must interconnect, and how the mechanism will evolve to meet the needs of future technology. Verizon Wireless and Verizon Communications jointly propose SYBAK, a comprehensive framework that provides all of these features.⁷⁰ SYBAK has three components: (1) a default bill-and-keep proposal that places the POI at a meet point at the LEC tandem and provides that each carrier will bear the cost of facilities on its side of the meet point; (2) a default bill-and-keep proposal that applies to SS7 usage and that permits interconnection at the LEC SS7 gateway; and (3) the availability of virtual NXXs to CMRS providers.

A. Bill-and-Keep Should Apply at a Meet Point at the LEC Tandem

As a threshold issue, any new system that the Commission establishes should be based on a clear definition of each carrier's default responsibility. Although carriers should be permitted to agree to arrangements other than the default, clear rules are essential to avoid arbitration. Default obligations will serve as the starting point for negotiations, and the default should therefore be designed to assign fairly the costs of interconnection. Concerns over market power should be addressed by establishing symmetrical obligations, not by assigning asymmetric default rights to one party that penalizes any class of carrier.

The most important component of any bill-and-keep mechanism is where the POI will be located. Because the POI delineates where one carrier's obligation ends and the other's begins, carriers have the incentive to place the POI as close to their own end users

⁷⁰ A diagram depicting the SYBAK proposal is attached as Exhibit A, although this diagram does not include the SS7 component of SYBAK.

as possible to minimize the costs they will have to bear under a bill-and-keep mechanism. Farrell and Hermalin refer to this in the context of COBAK as “moving central offices.”⁷¹ Selecting a POI that is fair to all carriers is of paramount importance.

The local exchange network has traditionally followed a “spoke and wheel” architecture, whereby several end offices subtend a tandem. The tandem contains the routing logic that sends traffic to multiple end offices and, as the last switching point on the LEC network for land-originated calls, tends to be the highest hierarchical switching facility in a LEC network. Interconnection at the LEC tandem is an essential element of LEC-CMRS interconnection. Otherwise, CMRS carriers would be required to expend significant resources to build their own routing tables and to duplicate, through dedicated facilities, transport to multiple end offices to perform the same functions otherwise performed by the tandem, without the economies of scale and scope experienced by the LEC.

The fact that this “spoke and wheel” infrastructure makes it efficient for most carriers to interconnect at the LEC tandem, however, has led LECs to claim that they should not be required to offer interconnection at their tandems when these facilities become overloaded. In these situations, LECs have established traffic thresholds at which they attempt to require interconnecting carriers to trunk directly to LEC end offices. In some cases these thresholds are very low, which results in inefficient duplication of LEC facilities.

⁷¹ Farrell and Hermalin at 8: “If bill and keep is imposed, each carrier has an incentive to ‘dump’ traffic on another carrier as soon as possible, and to accept it as late as possible. It seems inevitable that COBAK would create ‘regulatory arbitrage’ incentives to locate ‘central offices’ as far out in the network as possible.”

LECs typically have several switches provided over relatively narrow geographic areas. By contrast, CMRS carriers usually have fewer switches over larger geographic areas. CMRS carriers also often do not have switches in each LEC local service area. Because LECs have more potential points of interconnection per local area, they have incentives to increase the number of connections within a narrow geographic area, whereas CMRS carriers tend to have the incentive to minimize the number of connections and broaden the scope of the geographic area for the exchange of traffic.

Related to both of these issues is the question of which carrier bears the cost of transport to reach the other. Even though all carriers benefit from interconnection, carriers would obviously prefer not to bear the cost of facilities to reach other carriers, especially when these carriers have switches that can be up to 100 miles or more away. As detailed below, the virtual NXX issue is one example of this problem.

The bill-and-keep proposal that the Commission adopts must account for all of these variables to balance the financial impact on the LEC and CMRS industry segments in a fair way. Today there is an imbalance for a variety of reasons. Because CMRS providers terminate more traffic to landline callers than the converse, CMRS providers are net payors to landline carriers. This is true today regardless of whether LEC and CMRS costs are in alignment because under the Commission's rules, LECs pay CMRS providers the same rate that they charge for reciprocal compensation, unless CMRS carriers justify different rates through cost studies.⁷² In addition, although the LEC and CMRS provider each has the obligation to bear the cost of transport to reach the other

⁷² See 47 C.F.R. § 51.711(a)(1). Wireless carriers have not traditionally performed cost studies, which tend to be costly themselves and time-consuming, but the Commission's rules permit wireless carriers to do so. *Id.* at § 51.711(b).

carrier, CMRS carriers might also be required to carry traffic all the way to the LEC end office in cases where the LEC claims tandem exhaust. Notably, LECs do not bear a symmetrical burden to carry traffic beyond the mobile switching center (“MSC”). On the other hand, LECs claim that their tandem facilities are overloaded and they sometimes have to reach carriers far beyond their service area boundaries.

To balance all of these factors, Verizon Wireless proposes the SYBAK model for LEC-CMRS interconnection. Under SYBAK, the default POI would be at the LEC tandem. CMRS carriers would have the obligation to deliver traffic to the appropriate LEC tandem that serves the end office to which a call will be routed for termination as defined in the Local Exchange Routing Guide (“LERG”). Consequently, CMRS carriers could be required to interconnect at multiple points in the LATA. Under this proposal, CMRS carriers would also bear the cost of transport for traffic that flows between the tandem and the CMRS carrier’s MSC in both the land-to-mobile and mobile-to-land directions. Placing the POI on the LEC network would remove any debate about whether CMRS carrier switching facilities are equivalent to the LEC tandem.

In return for CMRS carriers’ assumption of these obligations, LECs would be required to permit all CMRS carriers to interconnect at a meet point at the tandem. LECs should only be permitted to require carriers to trunk directly to end offices in circumstances where traffic to a particular end office reaches the equivalent of one DS1 high-usage trunk group. Where direct trunking is necessary, the CMRS carrier should not bear any costs of the facility to reach the end office, and the LEC should allow overflow to that end office through the tandem up to an established threshold. The LEC

should assume all of the cost of the transport to reach the end office, and the CMRS carrier should be permitted to establish a POI at a facility in the tandem building, such as the digital cross-connect. If the LEC does not have a tandem, or technology has evolved beyond the current tandem-end office architecture, then the default POI would be at a highest hierarchical switching point or facility hub in the tandem wire center.⁷³

Although this proposal would balance the burdens that LECs and CMRS providers would have to bear under a bill-and-keep regime, the same regulatory intervention is not necessary for interconnection between CMRS providers or between CMRS providers and CLECs. For indirect interconnection, the LEC tandem or highest switching facility should be the POI between the CMRS provider and other third party, and both the CMRS provider and third party should be required to bear the costs of transport for each to reach the POI. For direct interconnection between CLECs and CMRS providers, these carriers can split the costs of two-way facilities, or each could provide its own one-way facilities to reach the other carrier.

This proposal is a simple and economically efficient solution to the complex issues underlying LEC-CMRS interconnection. The LEC tandem or highest switching facility serving the end office to which a call is destined, or the digital cross-connect in the same building in a direct trunking scenario, becomes the meet point POI. Unlike COBAK or BASICS, this will not require complicated regulatory proceedings because the POI should be easily discernable based on the LERG. By having simple and easy bright-line rules, carriers will spend less time in negotiation, increasing the likelihood of industry standard agreements.

⁷³ Highest hierarchical switching point means a switch in the LEC's infrastructure

The SYBAK proposal also provides the proper economic incentives for all carriers. Given the potential burden and cost imposed on CMRS carriers to trunk directly to LEC end offices, and the LECs' complaints about bearing the costs of transport to reach interconnecting carriers, this proposal is symmetrical in that it resolves both of these problems. By applying bill-and-keep as a default rule at the POI that is the LEC tandem or "highest" switch serving an end office in the LEC network, the proposal maximizes the efficiency of each carrier because it establishes a point past which no carrier will be expected to pay for the costs of carrying traffic except by mutual agreement. Verizon Wireless's proposal will also eliminate the need for either the LEC or CMRS carrier to duplicate the other carrier's network – a duplication that merely drives up prices to consumers without any corresponding benefit to either carrier.

SYBAK is also technology-neutral and forward-looking. It would free the FCC and state commissions from the difficult task of determining the equivalency between different technologies. Unlike COBAK, for example, it eliminates the need for regulators to determine whether a facility falls into a regulatory classification such as a "central office" because the tandem or other switch serving a particular end office location will be easy to ascertain from the LERG, making regulatory intervention unnecessary. In addition, as technology evolves, the FCC would not need to engage in new determinations of technological equivalence because LECs will continue to have a highest hierarchical point in their networks. For example, if ATM switches replace tandems, ATM switches would be the highest hierarchical switches, and the default POI would be at one of the ATM switches or at a facility hub in the tandem wire center. This

that serves as an aggregation point for traffic from subtending end offices or equivalent.

proposal would therefore have the dual benefit of eliminating termination rate disputes and complex regulatory proceedings to deal with the characterization of components of each carrier's network.

B. Bill-and-Keep Should Apply To Signaling System 7 Messages And LECs Should Permit Connection At SS7 Gateways

Another critical component of SYBAK is that it provides for bill-and-keep for SS7 messages. As Verizon Wireless proposed in comments, the Commission should apply bill-and-keep to Signaling System 7 ("SS7") because out-of-band signaling, including the Integrated Services Digital Network User Part ("ISUP") call-set up function,⁷⁴ is an essential component of interconnection. Although few comments addressed the issue, the record supports the application of bill-and-keep to SS7.⁷⁵

As part of the SYBAK proposal, Verizon Wireless proposes that to the extent that each party interconnects its SS7 network at the same hierarchical level, bill-and-keep should apply to ISUP messages. If one interconnecting party does not have a Signaling Transfer Point ("STP"), but relies on STP functionality provided by the other party, then the carrier providing the STP functionality should be permitted to charge for that service. Each carrier should be responsible for transport to the other carrier's STP.

In many cases, it would be more efficient if wireless carriers did not have to provide their own transport to reach every LEC STP. Wireless carriers should therefore have the opportunity to interconnect with LEC SS7 gateway service, which would allow wireless carriers to carry their signaling traffic to a central LEC STP that serves as a hub

⁷⁴ ISUP is the SS7 call control function that sets up and takes down trunks.

⁷⁵ Nextel at 19-20.

for reach the LEC's other STPs. Under SYBAK, wireless carriers would be responsible for the transport to reach the gateway. LECs could impose port charges to provide and maintain the SS7 gateway service, but usage charges should not apply.

C. Virtual NXXs Must Be Available To CMRS Providers

The final cornerstone in the SYBAK proposal is the ability for CMRS providers to use virtual NXXs to associate wireless numbers with rate centers that are different from where the CMRS provider interconnects with the LEC. As the record shows, virtual NXXs have been used for years to avoid the need for wireline subscribers to pay toll charges when making calls to CMRS subscribers.⁷⁶ Commenters emphasize that the unique mobile nature of wireless justifies wireless use of virtual NXXs, and that there is no evidence that wireless carriers offer customers NXXs in geographic areas outside where they are located to avoid access or toll.⁷⁷

Verizon Wireless's bill-and-keep proposal would ease any concerns that LECs have with the provision of virtual NXXs because the proposal would not require the LECs to carry calls beyond the LEC tandem. Although Verizon Wireless's proposal would not remove the toll bypass issues that LECs claim are the source of abuse by CLECs, Verizon Wireless emphasizes that unlike CLECs, wireless carriers have facilities and customers in rate centers where wireless customers would like to have numbers rated.

⁷⁶ See, e.g., AT&T Wireless at 57-58; CTIA at 48.

⁷⁷ AT&T Wireless at 58; BellSouth at 8 (emphasis on CLEC issues).

Given the Commission's ability to adopt rules of special concern for LEC-CMRS interconnection, the Commission can address these CLEC issues without prohibiting CMRS carriers from using this service.

III. CMRS PROVIDERS ARE ENTITLED TO RECEIVE JUST AND REASONABLE COMPENSATION FROM IXCs FOR SWITCHED ACCESS SERVICE

In the *Notice*, the Commission asked for comment on whether CMRS carriers are entitled to receive access charges, or some additional compensation, for interexchange traffic terminating on their networks.⁷⁸ The question the Commission should be asking is not whether CMRS providers are entitled to charge IXCs a reasonable rate for switched access service, but how that rate is to be set.

A. CMRS Providers Have Long Had Authority To Charge IXCs for Exchange Access Service

As early as 1987, the Commission stated that CMRS providers are entitled to just and reasonable compensation for the provision of access,⁷⁹ and the Commission reiterated this view in 1994 in its proceeding on wireless equal access obligations.⁸⁰ Also in 1994, the Commission adopted a temporary detariffing policy for CMRS access charges, an

⁷⁸ *Notice* ¶ 94.

⁷⁹ Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, *Declaratory Ruling*, 2 FCC Rcd 2910, 2915 (1987) (“*CMRS Declaratory Ruling*”).

⁸⁰ Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, *Notice of Proposed Rulemaking and Notice of Inquiry*, 9 FCC Rcd 5408, 5447 (1994) (“*CMRS Equal Access/Interconnection*”).

action that further reflected its view that CMRS providers are free to impose such charges.⁸¹ Then, in 1996, the Commission decided to propose formally that CMRS providers be permitted to recover specific access charges from IXCs, a step that it would clearly not have taken had it identified a valid legal obstacle to this policy.⁸² Since that time, nothing has occurred to alter this analysis. Indeed, in its *Local Competition First Report and Order*, the Commission found that nothing in the Telecommunications Act of 1996 had modified its existing access charge regime.⁸³

When the Commission proposed to allow CMRS providers to recover access charges in 1996, it recognized that to rule otherwise would be discriminatory.⁸⁴ In formulating its policies, the Commission has consistently identified competitive and technological neutrality as an important objective.⁸⁵ This goal would be well served by action in this proceeding determining how access charges should be set.

⁸¹ *CMRS Second Report and Order*, 9 FCC Rcd at 1498 (¶ 230).

⁸² Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers, *Notice of Proposed Rulemaking*, CC Docket No. 94-54, 11 FCC Rcd 5020, 5075 (1996) (“*CMRS Access Notice*”).

⁸³ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order*, 11 FCC Rcd 15499 (1996) (“*Local Competition First Report and Order*”).

⁸⁴ *CMRS Access Notice*, 11 FCC Rcd at 5075.

⁸⁵ See, e.g., Federal-State Joint Board on Universal Service, *Report and Order*, 12 FCC Rcd 8776, 8801-06 (1997); Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Second Report and Order*, 14 FCC Rcd 10954, 10966 (1999); Deployment of Wireline Services Offering Advanced Telecommunications Capability, *Order on Remand*, 15 FCC Rcd 385, 390 n.20 (1999).

Currently, all wireline ILECs and CLECs impose access charges on interconnecting IXCs. While it is true that the Commission is at varying stages of access reform with respect to the different carrier categories, all of these LECs will continue to impose access charges at least through mid-2005. Specifically, for price cap ILECs, the Commission's *CALLS Order* established interstate access levels that these carriers will be able to charge through June 30, 2005.⁸⁶ In the case of non-price cap ILECs, the Commission earlier this year sought comment on an industry-sponsored access (and universal service) reform proposal that it has since adopted.⁸⁷ In its April 2001 *CLEC Access Order*, the Commission ruled that CLECs can charge IXCs for access at tariffed rates at or below a "presumptively just and reasonable" threshold, or, alternatively, can seek access rates above this threshold through the negotiation process.⁸⁸

In light of the Commission's policy toward other industry segments, the Commission's access charge framework will be technologically neutral only if CMRS providers can charge IXCs for switched access in the same manner. Like wireline carriers, broadband CMRS operators provide telephone exchange service, and, as such,

⁸⁶ Access Charge Reform, *Sixth Report and Order*, CC Docket No. 96-262, 15 FCC Rcd 12962 (2000) ("*CALLS Order*").

⁸⁷ Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Notice of Proposed Rulemaking, CC Docket No. 00-256 (January 5, 2001). On October 11, 2001 the FCC voted to reform interstate access charges for rural carriers, but the text of the item is not yet available. See "FCC Adopts Order To Reform Interstate Access Charge System for Rural Carriers," *Public Notice* (rel. Oct. 11, 2001).

⁸⁸ Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers, *Seventh Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 9923, ¶ 40 (2001) ("*CLEC Access Order*").

also provide exchange access service.⁸⁹ The FCC should confirm that CMRS providers have the same rights as their wireline counterparts and may continue to charge IXCs for access to their wireless networks.⁹⁰

B. The Commission Can Establish a Zone of Presumptive Reasonableness For Untariffed CMRS Access Charges

Given that CMRS providers have a basic right to charge for access, the Commission can craft a CMRS access policy that is similar to that adopted in the CLEC context. The Commission is under no obligation to require CMRS carriers to tariff switched access service, either as a means to ensure that CMRS access rates are reasonable or as a mechanism to ensure that IXCs pay CMRS access charges. Instead, the Commission can find that when a wireless carrier charges a presumptively reasonable rate, IXCs are compelled to pay the CMRS carrier this presumptively reasonable rate.

1. A zone of presumptively reasonable switched access rates will ensure that CMRS providers can recover charges from IXCs.

Under Section 201(a) of the Act, common carriers have a duty to accept a “reasonable request” for service.⁹¹ In the *CLEC Access Order*, the Commission confirmed that when a customer “attempts to call from and/or to an access line served by

⁸⁹ As interpreted by the Commission in its *First Interconnection Order*, the Communications Act encompasses broadband CMRS within its definition of telephone exchange service. 47 U.S.C. § 153(47); *First Interconnection Order*, ¶ 1013.

⁹⁰ In fact, a decision prohibiting CMRS access charges would be particularly egregious at this time because, as Verizon Wireless explained in its comments, CMRS providers now find themselves subject to access charges for inter-MTA calls that connect directly to LEC networks. *See* Verizon Wireless at 41.

⁹¹ 47 U.S.C. § 201(a).

a CLEC with presumptively reasonable rates, that request for communications service is a reasonable one that the IXC may not refuse without running afoul of section 201(a).”⁹² The FCC recently confirmed this decision, finding that although IXCs do not have the obligation to accept traffic from and terminate traffic to CLECs regardless of their switched access rates, IXCs remain under a continuing obligation to accept that service until another rate is established through negotiation or litigation.⁹³

Given that the switched access service that wireless carriers offer is no different from the service CLECs offer, IXCs should be compelled to pay a CMRS provider’s “presumptively reasonable” rate, as it must for CLECs. Presumptively reasonable rates can be established in a variety of ways. For instance, the CMRS carrier and IXC could agree in a contract to the rates and terms for originating and terminating access. Alternatively, if the CMRS carrier and IXC could not agree, the Commission could establish a zone of reasonableness that would be presumptively lawful. As long as a CMRS provider priced access within this zone, the IXC would not have grounds to refuse to pay, or to block traffic.

In the *CLEC Access Order*, the Commission adopted a “presumption of reasonableness” for CLEC access charges.⁹⁴ Under this policy, tariffed CLEC access charges that are at or below a certain threshold, specifically, a rate that over time

⁹² *CLEC Access Order*, ¶ 24.

⁹³ AT&T and Sprint Petitions for Declaratory Ruling on CLEC Access Charge Issues, *Declaratory Ruling*, CCB/CPD No. 01-02, FCC No. 01-313, ¶¶ 13-19 (rel. Oct. 22, 2001) (“*CLEC Access Declaratory Ruling*”).

⁹⁴ *CLEC Access Order*, ¶ 41.

decreases to the ILEC access rate, are viewed by the Commission as presumptively just and reasonable. If an IXC challenges a CLEC's tariffed access rate below this threshold, the burden is on the IXC to demonstrate that the CLEC's access charge is unjustified. At the same time, CLECs can seek access rates above this "safe harbor" threshold through the negotiation process. The Commission has adopted a mandatory detariffing policy for any access rates above this threshold.

As it did for CLECs, the Commission should determine that CMRS access rates at or below a given threshold are presumptively just and reasonable, placing the burden on any IXC to demonstrate that any such rate is unlawful. On the other hand, any CMRS access charge above this threshold that is not the product of negotiations should be deemed presumptively unreasonable, and, if challenged, any CMRS provider unilaterally imposing such a rate should be required to justify the lawfulness of that charge.⁹⁵

As far as how the Commission could determine what rates for CMRS access should be in this zone of reasonableness, the Commission has already set forth a series of market factors it will consider when examining the reasonableness of CLEC access rates. These include: (1) the access rates of ILECs operating within the same territory; (2) access rates charged by other CLECs; (3) the CLEC's end user rates and how they compare to the predominant ILEC's end user rates; (4) the disparity between the CLEC's access and reciprocal compensation rates; and (5) the downward trend of access for the

⁹⁵ The Commission should reject AT&T Wireless' proposal that the Commission adopt a policy of bill and keep for CMRS-IXC interconnection. This approach would fall far short of technological neutrality given that ILECs and CLECs can charge for access at least until 2005. Comments of AT&T Wireless at 44.

relevant period.⁹⁶ Many of these factors could be useful in assisting the Commission to establish a CMRS access “safe harbor.”

2. The Commission should retain its current policy of detariffing all CMRS, including access charges

The Commission’s CMRS access framework should differ from its CLEC policy in one key respect: the Commission should retain its policy of mandatory detariffing for all CMRS access rates.⁹⁷ The Commission is under no statutory or other obligation to require CMRS providers to tariff access services. As the FCC has already recognized, Congress granted the FCC specific authority to forbear from the tariffing requirements of Section 203 of the Act.⁹⁸

Given the presumed reasonableness of access rates below the ILEC threshold, CMRS providers should be able simply to transmit their presumptively lawful access charges directly to the relevant IXC, which would then be obligated to render payment. As indicated above, IXCs could still challenge these access rates through the Section 208 complaint process,⁹⁹ but in that proceeding they would face the burden of demonstrating the unreasonableness of these charges.

⁹⁶ *CLEC Access Declaratory Ruling*, ¶ 3.

⁹⁷ In its comments, VoiceStream proposes that the Commission establish a tariffing requirement for CMRS access charges. While Verizon Wireless commends VoiceStream for supporting just and reasonable compensation for IXC use of CMRS networks, Verizon Wireless disagrees with its position on the need for access tariffs. VoiceStream at 15.

⁹⁸ *CMRS Second Report and Order*, 9 FCC Rcd at 1478-81.

⁹⁹ 47 U.S.C. § 208.

The detariffing of CMRS access charges would be consistent with the Commission's general approach to CMRS regulation, and also with its policy in other service contexts. In the *CMRS Second Report and Order* in 1994, the Commission established a permanent, mandatory detariffing policy for interstate service to end-users, and a temporary detariffing policy for CMRS providers' provision of interstate access service.¹⁰⁰ In doing so, the Commission identified numerous public interest benefits from this detariffing. In a competitive environment, the Commission noted that:

requiring tariffing filings can (1) take away carriers' ability to make rapid, efficient responses to changes in demand and cost, and remove incentives for carriers to introduce new offerings; (2) impede and remove incentives for competitive price discounting, since all price changes are public, which can therefore be quickly matched by competitors; and (3) impose costs on carriers that attempt to make new offerings. Second, tariff filings would enable carriers to ascertain competitors' prices and any changes to rates, which might encourage carriers to maintain rates at an artificially high level. Moreover, tariffs may simplify tacit collusion as compared to when rates are individually negotiated, since publicly filed tariffs facilitate monitoring. Third, tariffing, with its attendant filing and reporting requirements, imposes administrative costs upon carriers. These costs could lead to increased rates for consumers and potential adverse effects on competition. Finally, forbearance will foster competition which will expand the consumer benefits of a competitive marketplace. The absence of tariff filing requirements and the attendant notice periods should promote competitive market conditions by enabling CMRS providers to respond quickly to competitors' price changes.¹⁰¹

¹⁰⁰ *CMRS Second Report and Order*, 9 FCC Rcd at 1479.

¹⁰¹ *Id.*

For similar reasons, the Commission in 1996 decided to prohibit non-dominant IXC's from filing tariffs for the provision of interstate, domestic interexchange service.¹⁰² Later that year, the Commission again cited many of these competitive and administrative factors in adopting a permissive detariffing policy for the provision of interstate access services by non-ILEC providers.¹⁰³

A decision by the Commission to retain the detariffing of CMRS access charges would yield many of these same public interest benefits. In particular, maintaining the Commission's detariffing policy would be efficient, both for carriers and the Commission, because the Commission could forego the prospect of countless new CMRS access tariff filings. This detariffing of CMRS access would also enhance wireless carriers' price flexibility and their ability to adjust rapidly to new competitive conditions. Consumers would ultimately benefit from this increased competitiveness through lower service charges and rates.

IV. CONCLUSION

Verizon Wireless urges the Commission to implement a bill-and-keep mechanism for the exchange of traffic between LECs and CMRS providers. Under Verizon Wireless's SYBAK proposal, the point of interconnection should be at the LEC tandem or highest hierarchical switching point. Each carrier should bear all costs of facilities on its side of the POI. In the event that the tandem or highest switching point becomes

¹⁰² Policy and Rules Concerning the Interstate, Interexchange Marketplace, *Second Report and Order*, 11 FCC Rcd 20730, 20760-61 (1996). The Commission's decision was upheld by the D.C. Circuit Court in 2000. *MCI WorldCom v. FCC*, 209 F.3d 760 (D.C. Cir. 2000).

¹⁰³ Hyperion Telecommunications, Inc. Petition for Forbearance, *Memorandum Opinion and Order*, 12 FCC Rcd 8596, 8608-11 (1997).

exhausted, when traffic to any LEC end office exceeds one DS-1, bill-and-keep should apply at a location in the tandem building such as the digital cross-connect. The LEC should be required to continue to bear the cost of facilities from the POI to the end user. SS7 should be available at bill-and-keep, and CMRS providers should be able to purchase LEC SS7 gateway services. Virtual NXX codes should continue to be available to CMRS providers. The Commission should also require IXC's to pay CMRS providers for switched access services as long as they charge presumptively reasonable rates.

Respectfully submitted,

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Dated: November 5, 2001